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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY
INTERNATIONAL, a California
not-for-profit religious
corporation;

Plaintiffs,

vs.

GERALD ARMSTRONG; DOES 1
through 25, inclusive,

Defendants.

No. BC 052395

DEFENDANT ARMSTRONG'S
MEMORANDUM IN SUPPORT OF
DEMURRER TO CHURCH OF
SCIENTOLOGY INTERNATIONAL'S
AMENDED VERIFIED COMPLAINT FOR
DAMAGES AND FOR PRELIMINARY AND
PERMANENT INJUNCTIVE RELIEF FOR
BREACH OF CONTRACT

Date: July 2, 1992

Time: 8:30 a.m.

Dept: 30

Motion Cut Off: Not Set

Discovery Cut Off: Not Set

Trial Date: None

COPY

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1 **I. INTRODUCTION**

2 By its prayer for judgment on its twelfth cause of action for
3 injunction, Scientology seeks a "permanent injunction enjoining
4 defendants from violating the terms of the Agreement." (Cmplt. at
5 11:12-14) The "Agreement" to which Scientology makes reference is
6 a "Mutual Release of All Claims and Settlement Agreement" executed
7 by Armstrong on December 6, 1986. (Request for Judicial Notice
8 ("RJN") Ex. A) Based on but not limited to the following grounds,
9 said agreement is illegal, obstructive of justice, and unfair as
10 to Armstrong:

- 11 ▶ It sets up a collusive appeal (§§ 4A, 4B).
- 12 ▶ It prohibits Armstrong from mentioning Scientology or L. Ron
13 Hubbard to anyone, or letting anyone mention such subjects to
14 him (§ 7D).
- 15 ▶ It manipulates the court's custody of evidence in Zolin ^{1/}
16 and Armstrong I. (§ 7E) ^{2/}
- 17 ▶ It prohibits Armstrong from exercising his First Amendment
18 right to freely associate with those adverse to Scientology.
19 (§ 7G)
- 20 ▶ It prohibits Armstrong from giving testimony in any judicial,
21 legislative or administrative proceeding unless pursuant to
22 subpoena, the service of which he must avoid and not discuss
23 Scientology or Scientology litigation with anyone. (§ 7H)
- 24 ▶ It prohibits the parties from using in any future litigation,
25 facts that were developed in Armstrong I. (§ 7I)
- 26 ▶ It prohibits Armstrong from providing information to law
27 enforcement agencies exposing the practices of the
28 Scientology Organization similar to those litigated before
29 Judge Breckenridge. (§ 10)
- 30 ▶ It prohibits the disclosure of the contents of the terms of
31 the settlement agreement set forth above. (§ 18D)

32 ¹ See United States v. Zolin (9th Cir. 1987) 809 F.2d
33 1411; United States v. Zolin (1989) 109 S.Ct. 2619, 105 L.Ed.2d
34 469; United States v. Zolin (6/20/90) 90 Daily Journal D.A.R.
35 6890 (Scientology subject to crime-fraud exception to attorney-
36 client privilege)

37 ² Armstrong I refers to the action styled Church of
38 Scientology of California v. Gerald Armstrong, Los Angeles
39 Superior Court Case No. C 420153. (affirmed, Church of Scientology
40 v. Armstrong (1991) 232 Cal.App.3d 1060, 283 Cal.Rptr. 917.

1 Since the agreement is directed toward the illegal objectives
2 of suppression of evidence and obstruction of justice, it is void.
3 Since the consideration which Armstrong is supposed to provide is
4 illegal, the agreement fails due to a lack of consideration.
5 Since the agreement is unjust and unreasonable as to Armstrong,
6 the complaint fails to state facts sufficient to state a cause of
7 action because any injunctive relief would of necessity be
8 predicated upon the Court ordering specific performance of the
contract the entitlement to which Scientology has failed to
sufficiently allege as a matter of law.

9 II. STATEMENT OF FACTS

10 The agreement settled litigation initiated by Scientology on
11 August 2, 1982, when it sued Armstrong in Armstrong I. (RJN, Ex.
12 B) Generally, the Armstrong I complaint alleged that Armstrong
13 "converted to his own use confidential archive materials and
14 disseminated the same to unauthorized persons, thereby breaching
15 his fiduciary duty to the [c]hurch, which sought return of the
16 documents, injunctive relief against further dissemination of the
17 information contained therein, imposition of a constructive trust
over the property and any profits Armstrong might realize from his
use of the materials, as well as damages." Armstrong, supra, 232
Cal.App.3d at 1063.

18 Defendant Armstrong, prevailed in that first trial. On June
19 22, 1984, the Honorable Paul G. Breckenridge, Jr., filed his
20 Memorandum of Intended Decision in Armstrong I. He held
21 "plaintiff and plaintiff in intervention are to take nothing, and
22 defendant is entitled to Judgment and costs." RJN, Ex. C, at p.
23 1:22-24.

24 In that Decision, Judge Breckenridge specifically found the
25 Scientology organization to be malevolent, in part because the
26 organization "or its minions is fully capable of intimidation [of
witnesses, including Armstrong] or other physical or psychological
abuse if it suits their ends." Id. at 8:3-6. He further provided
the following factual findings, inter alia, regarding Scientology:

27 In 1970 a police agency of the French Government conducted an
28 investigation into Scientology and concluded "this sect,
under the pretext of 'freeing humans' is nothing in reality
but a vast enterprise to extract a maximum amount of money

1 from its adepts by (use of) pseudo-scientific theories, by
2 (use of) 'auditions' and 'stage settings' (lit. to create a
3 theatrical scene') pushed to extremes (a machine to detect
4 lies, its own particular phraseology . . .), to estrange
5 adepts from their families and to exercise a kind of
6 blackmail against persons who do not wish to continue with
7 this sect." [footnote omitted] From the evidence presented
8 to this court in 1984, at the very least, similar conclusions
9 can be drawn.

10 In addition to violating and abusing its own members civil
11 rights, the organization over the years with its "Fair Game"
12 doctrine has harassed and abused those persons not in the
13 Church whom it perceives as enemies. The organization is
14 clearly schizophrenic and paranoid, and this bizarre
15 combination seems to be a reflection of its founder LRH [L.
16 Ron Hubbard]. The evidence portrays a man who has been
17 virtually a pathological liar when it comes to his history,
18 background, and achievements. The writings and documents in
19 evidence additionally reflect his egoism, greed, avarice,
20 lust for power, and vindictiveness and aggressiveness against
21 persons perceived by him to be disloyal or hostile.

22 Id. at 8:7-9:4. (Emphasis added.)

23 In contrast to his findings regarding Scientology, Judge
24 Breckenridge found Armstrong and his witnesses to be credible and
25 sympathetic. He wrote:

26 As indicated by its factual findings, the court finds
27 the testimony of Gerald and Jocelyn Armstrong, Laurel
28 Sullivan, Nancy Dincalcis, Edward Walters, Omar Garrison,
Kima Douglas, and Homer Schomer to be credible, extremely
persuasive and the defense of privilege or justification
established and corroborated by this evidence . . . In all
critical and important matters, their testimony was precise,
accurate, and rang true. The picture painted by these former
dedicated Scientologists, all of whom were intimately
involved [with the highest echelons of power in] the
Scientology Organization, is on one hand pathetic, and on the
other, outrageous. Each of these persons literally gave
years of his or her respective life in support of a man, LRH
[L. Ron. Hubbard], and his ideas. Each has manifested a
waste and loss or frustration which is incapable of
description.

29 Id. at 7:9-26. (Emphasis added.)

30 The agreement, for which in the case at bar Scientology seeks
31 an injunction to enforce, set up a collusive appeal that was
32 designed to neutralize the stinging opinion of Judge Breckenridge
33 in Armstrong I. Thus, Paragraph 4B of the settlement agreement
34 stated:

35 As of the date this settlement Agreement is executed,

1 there is currently an appeal pending before the California
2 Court of Appeal, Second Appellate District, Division 3,
3 arising out of the above referenced action delineated as
4 **Appeal No. B005912**. It is understood that this appeal arises
5 out of the Church of Scientology's complaint against
6 plaintiff which is not settled herein. This appeal shall be
7 maintained notwithstanding this Agreement. Plaintiff agrees
8 to waive any rights he may have to take any further appeals
9 from any decision eventually reached by the Court of Appeal
10 or any rights he may have to oppose (by responding brief or
11 any other means) any further appeals taken by the Church of
12 Scientology of California. The Church of Scientology of
13 California shall have the right to file any further appeals
14 it deems necessary. [Emphases added.]

15 (RJN, Ex. A)

16 Paragraph 7D of the agreement prohibited Armstrong from
17 exercising his First Amendment rights to Free Speech on the
18 subject of Scientology. He was prohibited specifically from
19 publishing or attempting to publish any information regarding
20 Scientology, or discussing Scientology with others. He was
21 required to "maintain strict confidentiality and silence with
22 respect to his experiences with the Church of Scientology and any
23 knowledge or information he may have concerning the Church of
24 Scientology, L. Ron Hubbard" or the Scientology Organization. Id.

25 Paragraph 7E required Armstrong to return all materials in
26 Appendix A to the agreement, including evidence in Armstrong I and
27 United States v. Zolin, but there is no such appendix. Id.

28 Paragraph 7G prohibited Armstrong from conducting himself
wherein he would

voluntarily assist or cooperate with any person adverse to
Scientology in any proceeding against any of the Scientology
organizations . . . Plaintiff also agrees that he will not
cooperate in any manner with any organizations aligned
against Scientology. Id.

Paragraph 7H of the settlement agreement required Armstrong
not to participate in any litigation involving the Scientology
Organization unless it was pursuant to subpoena. But in Paragraph
7H, however, the agreement required Armstrong to avoid any service
of subpoena by stating that he "shall not make himself amenable to

1 service of any such subpoena." ^{3/} Id.

2 Paragraph 7I required that any evidence developed during the
3 course of Armstrong I to not exist in the future. It states:

4 . . . in the event of any future litigation . . . any past
5 action or activity, either alleged in this lawsuit or
6 activity similar in fact to the evidence that was developed
7 during the course of this lawsuit, will not be used by either
8 party against the other in any future litigation. In other
9 words, the "slate" is wiped clean concerning past actions by
10 any party. Id.

11 Paragraph 10 required Armstrong to

12 not assist or advise anyone, including individuals,
13 partnerships, associations, corporations, or governmental
14 agencies contemplating any claim or engaged in litigation or
15 involved in or contemplating any activity adverse to the
16 interests of any entity or class of persons listed above in
17 Paragraph 1 of this Agreement. [RJN, Ex. A]

18 Paragraph 18D required Armstrong not to disclose the contents
19 of the Agreement. Id.

20 **III. THE DEMURRER TO THE COMPLAINT AND TO THE TWELFTH CAUSE
21 OF ACTION MUST BE GRANTED BECAUSE SCIENTOLOGY HAS
22 FAILED TO PLEAD FACTS THAT THE CONTRACT IS JUST AND
23 REASONABLE AND IS SUPPORTED BY ADEQUATE CONSIDERATION**

24 An injunction cannot be granted to prevent the breach of a
25 contract, the performance of which would not be specifically
26 enforced. (Thayer Plymouth Center, Inc. v. Chrysler Motors Corp.
27 (1967) 255 Cal.App.2d 300, 304, 63 Cal.Rptr. 148) Applying Civil
28 Code section 3391 to the agreement results in the inescapable
conclusion that Armstrong cannot be compelled to specifically

29 _____
30 ³ In full, Paragraph 7H states:
31 "[ARMSTRONG] agrees not to testify or otherwise participate in any
32 other judicial, administrative or legislative proceeding adverse
33 to Scientology or any of the Scientology Churches, individuals or
34 entities listed in Paragraph 1 above unless compelled to do so by
35 lawful subpoena or other lawful process. [ARMSTRONG] shall not
36 make himself amenable to service of any such subpoena in a manner
37 which invalidates the intent of this provision. Unless required
38 to do so by such subpoena, [ARMSTRONG] agrees not to discuss this
litigation or his experiences with and knowledge of the Church
with anyone other than members of his family. As provided
hereinafter in Paragraph 18(d), the contents of this Agreement may
not be disclosed. [Emphasis added.] "

1 perform the agreement. ⁴/

2 The fundamental rule regarding a litigant's entitlement to
3 specific performance has been well established for decades.

4 It has been repeatedly held that unless a complaint alleges
5 the reasonableness of the contract and the adequacy of the
consideration it fails to state a cause of action.

6 (Eichholtz v. Nicoll (1944) 66 Cal.App.2d 67, 151 P.2d 664, 666)
7 Thus, it is basic that "equity will not lend its aid to enforce
8 contracts which upon their face are so manifestly harsh and
9 oppressive as to shock the conscience; it must be affirmatively
10 shown that such contracts are fair and just." (Jacklich v. Baer
11 (1943) 57 Cal.App.2d 684, 135 P.2d 179, 183) The rationale for
this rule is grounded in a common sense recognition of the rules
of fair play.

12 It is said . . . that the doctrine that he who seeks equity
13 must do equity means that the party asking the aid of the
14 court must stand in a conscientious relation to his
15 adversary; that the transaction from which his claim arises
16 must be fair and just and that the relief itself must not be
harsh and oppressive upon the defendant. And that specific
performance will always be refused when a contract itself is
unfair, one-sided, unconscionable, or affected by any other

17 ⁴ In full, Civil Code section 3391 states:

18 "WHAT PARTIES CANNOT BE COMPELLED TO PERFORM. Specific
19 performance cannot be enforced against a party to a contract in
any of the following cases:

20 1. If he has not received an adequate consideration for the
21 contract;

22 2. If it is not, as to him, just and reasonable;

23 3. If his assent was obtained by the misrepresentation,
24 concealment, circumvention, or unfair practices of any party to
whom performance would become due under the contract, or by any
promise of such party which has not been substantially fulfilled;
or

25 4. If his assent was given under the influence of mistake,
26 misapprehension, or surprise, except that where the contract
27 provides for compensation in the case of mistake, a mistake within
the scope of such provision may be compensated for, and the
28 contract specifically enforced in other respects, if proper to be
so enforced."

1 such inequitable feature, and when specific performance would
2 be oppressive upon the defendant, or would prevent the
enjoyment of his own rights, or would in any other manner
work injustice.

3 (Id., 135 P.2d at 184; Chrittenden v. Hansen (1943) 59 Cal.App.2d
4 56, 138 P.2d 37, 38) The burden is on the plaintiff to plead and
5 prove "that the contract is not inequitable or unconscionable" in
order to support a decree of specific performance. (Quan v.
6 Kraseman (1948) 84 Cal.App.2d 550, 191 P.2d 16, 17; Eichholtz)

7 Scientology has failed to affirmatively plead facts to
8 support the fairness and justness of the agreement.

9 **A. The Agreement Is Not Just And Reasonable**
Because Its Object Is Unlawful

10 What Scientology is seeking to do is to remove Armstrong from
11 voluntarily testifying in any judicial, legislative or
12 administrative proceeding. Such is unlawful because it is a
13 suppression of evidence that was judicially credited by Judge
14 Breckenridge in Armstrong I and an obstruction of justice. ^{5/}
15 Armstrong's position is that the cumulative effect of the
16 contractual provisions operates, and was intended to operate, to
17 eliminate judicially sworn and credited information, the validity
18 of which was litigated in Armstrong I, which tends to discredit
19 Scientology. The Scientology Organization wants to corrupt
20 governmental processes by using the legal system to bury evidence
developed by the legal system in order to minimize Scientology's
accountability and legal exposure. Such objective can be achieved
by removing the availability of discrediting information from the

21 ⁵ Such is precisely the type of agreement that current
22 Senate Bill No. 711 seeks to outlaw. As amended January 27, 1992,
Senate Bill No. 711 states:

23 Notwithstanding any other provision of law, as a matter of
24 public policy, in actions based on fraud, or based upon
25 personal injury . . . no part of any confidentiality
26 agreement, settlement agreement, stipulated agreement, or
27 protective order to keep from public disclosure information
that is evidence of fraud shall be entered or enforceable
upon settlement or conclusion of any litigation or dispute
concerning the fraud . . .

28 Senate Bill No. 711, Sec. 2 at p. 2.

1 grasp of those whom Scientology has hurt.

2 Where a contract is made either (1) to achieve an illegal
3 purpose, or (2) by means of consideration that is not legal, the
4 contract itself is void. (Witkin, Summary of California Law (9th
5 Ed. 1987) Vol. 1, Contracts, § 441 at 396) "The object of the
6 contract is the thing which it is agreed, on the party receiving
7 the consideration, to do or not to do." (Civil Code section 1595)
8 The object must be lawful when the contract is made. (Civil Code
9 section 1596) Whether or not a contract in a given case is
10 contrary to public policy is a question of law to be determined
11 from the circumstances of each particular case. (Bovard v.
12 American Horse Enterprises (1988) 201 Cal.App.3d 832, 838, 247
13 Cal.Rptr. 340; Kallen v. Delug (1984) 157 Cal.App.3d 940, 951,
14 203 Cal.Rptr. 879; Russell v. Solding (1976) 59 Cal.App.3d 633,
15 642, 131 Cal.Rptr. 145)

16 "Agreements to suppress evidence have long been held void as
17 against public policy, both in California and in most common law
18 jurisdictions." (Williamson v. Superior Court (1978) 21 Cal.3d
19 829, 836-37) In Brown v. Freese (1938) 28 Cal.App.2d 608, the
20 California Court of Appeal adopted section 557 of the Restatement
21 of the Law of Contracts prohibiting as illegal those agreements
22 which sought to suppress the disclosure of discreditable facts.
23 The court stated:

24 A bargain that has for its consideration the nondisclosure of
25 discreditable facts . . . is illegal. . . . In many cases
26 falling within the rule stated in the section the bargain is
27 illegal whether or not the threats go so far as to bring the
28 case within the definition of duress. In some cases,
29 moreover, disclosure may be proper or even a duty, and the
30 offer to pay for nondisclosure may be voluntarily made.
31 Nevertheless the bargain is illegal. Moreover, even though
32 the offer to pay for nondisclosure is voluntarily made and
33 though there is no duty to make disclosure or propriety in
34 doing so, a bargain to pay for nondisclosure is illegal.
35 [Emphasis added.]

36 (Brown 28 Cal.App.2d at 618; Allen v. Jordanos' Inc. (1975) 52
37 Cal.App.3d 160, 125 Cal.Rptr. 31 6/)

38 ⁶ In Allen, the court did not allow a breach of contract
39 action to be litigated because it involved a contract that was
40 void for illegality. In Allen, plaintiff filed a complaint for

1 The nondisclosure was not a minor or indirect part of
2 the contract, but a major and substantial consideration
3 of the agreement. A bargain which includes as part of
4 its consideration nondisclosure of discreditable facts
5 is illegal. (See Brown v. Freese, 28 Cal.App.2d 608, 618
6 [83 P.2d 82].) It has long been hornbook law that
7 consideration which is void for illegality is no
8 consideration at all. [Citation.]

9 (Id. 52 Cal.App.3d at 166)

10 The object of a contract must be lawful. (Civil Code
11 sections 1550, 1596) If the contract has a single object, and
12 that object is unlawful, the entire contract is void. (Civil Code
13 section 1598)

14 Civil Code § 1668 states:

15 All contracts which have for their object, directly or
16 indirectly, to exempt anyone from responsibility for his
17 own fraud, or willful injury to the person or property
18 of another, or violation of law, whether willful or
19 negligent, are against the policy of the law.

20 Witkin, California Criminal Law (2d.Ed. 1988) Vol. 2, § 1132,
21 at p. 1311 states:

22 It is obviously an obstruction of justice to conceal,
23 suppress, falsify or destroy evidence which is relevant and

24 breach of contract which he subsequently amended five times.
25 Plaintiff, a union member, was entitled by his collective
26 bargaining agreement to have a fair and impartial arbitration to
27 determine the truth or falsity of the allegations against him of
28 theft and dishonesty. The allegations of the amended complaints
stated that there had been an agreement between the parties
whereby defendant laid off plaintiff, defendant's employee, and
allowed plaintiff to receive unemployment benefits and union
benefits. "Defendants also agreed that they would not communicate
to third persons, including prospective employers, that plaintiff
was discharged or resigned for dishonesty, theft, a bad employment
attitude and that defendants would not state they would not rehire
plaintiff." Id. at 163. Plaintiff alleged there had been a
breach in that defendants had communicated to numerous persons,
including potential employers and the Department of Human
Resources and Development, that plaintiff was dishonest and guilty
of theft and for that reason had resigned for fear of being
discharged for those reasons, that plaintiff had a bad attitude
and that defendants would not rehire him. Plaintiff alleged as a
result of the breach he suffered a loss of unemployment benefits,
union benefits and earnings. The court held that the plaintiff
had bargained for an act that was illegal by definition, the
withholding of information from the Department of Human Resources
Development.

known to be sought or desired for use in a judicial proceeding or an investigation by law officers.

Since an agreement to suppress evidence or to conceal a witness is illegal, (Penal Code §§ 136, 136.1, ⁷/ and 138; Mary R. v. B. & R. Corp. (1983) 149 Cal.App.3d 308, 196 Cal.Rptr. 871; Tappan v. Albany Brewing Co. (1889) 80 Cal. 570, 571-572; People v. Pic'l (1982) 31 Cal.3d 731, 183 Cal.Rptr. 685), and the effect of the settlement has been to remove the availability of Armstrong as a witness, such can "lead to subtle but deliberate attempts to suppress relevant evidence." (Williamson, 21 Cal.3d at 838; Precision Co. v. Automotive Co. (1944) 324 U.S. 806; Keystone v. Excavater Co. (1933) 290 U.S. 240) ⁸/

⁷ Penal Code section 136.1, in part, provides:

"(a) Except as provided in subdivision (c), any person who does any of the following is guilty of a misdemeanor:

(1) Knowingly and maliciously prevents or dissuades any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law.

(2) Knowingly and maliciously attempts to prevent or dissuade any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law.

(c) Every person doing any of the acts described in subdivision (a) or (b) knowingly and maliciously under any one or more of the following circumstances, is guilty of a felony . . . under any of the following circumstances: . . .

(2) Where the act is in furtherance of a conspiracy...

(4) Where the act is committed by any person for pecuniary gain or for any other consideration acting upon the request of another person. All parties to such transaction are guilty of a felony.

(d) Every person attempting the commission of any act described in subdivisions (a), (b), and (c) is guilty of the offense attempted without regard to success or failure of such attempt."

⁸ A contract must have a lawful object, and that a contract for an object prohibited by the Penal Code is void. (Civil Code sections 1596, 1598, and 1599) Since the object of the agreement violates Penal Code § 136.1, it is void.

"The general rule controlling in cases of this character is that where a statute prohibits or attaches a penalty to the doing of an act, the act is void . . . The imposition by statute of a penalty implies a prohibition of the act to which the penalty is attached, and a contract founded upon such act is void."

(Smith v. Bach 183 Cal. 259, 262, quoted in Severance v. Knight-Counihan Co. (1947) 29 Cal.2d 561, 177 P.2d 4, 8)

1 In his work Equity Jurisprudence (4th Ed.1918) § 397 at 738,
2 Professor Pomeroy states:

3 "Whenever a party, who as an actor, sets the judicial
4 machinery in motion to obtain some remedy, has violated
5 conscience, good faith, or other equitable principle, in
6 his prior conduct, then the doors of the court will be
7 shut against him in limine; the court will refuse to
8 interfere on his behalf, to acknowledge his right, or to
9 award him any remedy. [Emphasis added.]"

10 "This rule is not generally applied to secure justice
11 between parties who have made an illegal contract, but
12 from regard for a higher interest - that of the public,
13 whose welfare demands that certain transactions be
14 discouraged. [Emphasis added.]"

15 (Owens v. Haslett (1950) 98 Cal.App.2d 829, 221 P.2d 252, 254)

16 Illegal contracts are matters which implicate public policy.
17 Public policy has purposefully been a "vague expression . . .
18 [that] has been left loose and free of definition in the same
19 manner as fraud." (Safeway Stores v. Hotel Clerks Intn'l Ass.
20 (1953) 41 Cal.2d 567, 575, 261 P.2d 721) Public policy means
21 "anything which tends to undermine that sense of security for
22 individual rights, whether of personal liberty or private
23 property, which any citizen ought to feel is against public
24 policy." Ibid. Therefore, "[a] contract made contrary to public
25 policy may not serve as the foundation of any action, either in
26 law or in equity, [Citation] and the parties will be left where
27 they are found when they come to court for relief. [Citation.]"
28 (Tiedje v. Aluminum Paper Milling Co. (1956) 46 Cal.2d 450, 454,
29 296 P.2d 554)

30 "It is well settled that agreements against public policy and
31 sound morals will not be enforced by the courts. It is a
32 general rule that all agreements relating to proceedings in
33 court which involve anything inconsistent with [the] full and
34 impartial course of justice therein are void, though not open
35 to the actual charge of corruption."

36 (Eggleston v. Pantages (1918) 103 Wash. 458, 175 P. 34, 36;

37 Maryland C. Co. v. Fidelity & Cas. Co. of N.Y. 71 Cal.App. 492

38 Fong v. Miller (1951) 105 Cal.App.2d 411, 414, 233 P.2d 606.)

39 "In other words, where the illegal consideration goes to the whole
40 of the promise, the entire contract is illegal." Witkin, Summary
41 of California Law (9th Ed. 1987) Vol. 1, Contracts, § 429 at p.
42 386; Morey v. Paladini (1922) 187 Cal. 727, 738 ["The desire and

1 intention of the parties [to violate public policy] entered so
2 fundamentally into the inception and consideration of the
3 transaction as to render the terms of the contract nonseverable,
and it is wholly void."])

4 **B. The Agreement Is Not Supported By**
5 **Adequate Consideration**

6 Since paragraphs 4A, 4B, 7D, 7E, 7G, 7H, 7I, 10, and 18D
7 are individually designed to suppress evidence, *a fortiori* the
8 cumulative effect of all of them violate public policy and do not
9 constitute adequate consideration for the contract which
10 Scientology seeks to specifically enforce by way of injunction.

11 The consideration of a contract must be lawful. (Civil Code
12 section 1607) If any part of the consideration is unlawful the
13 entire contract is void. (Civil Code section 1608) Consideration
14 is unlawful if it is contrary to an express provision of law,
15 contrary to the policy of express law, though not expressly
16 prohibited, or otherwise contrary to good morals. (Civil Code
17 section 1667)

18 **C. The Agreement Is Unfair To Armstrong Because**
19 **It Is One-Sided And Violates His**
20 **Constitutionally Protected Right To Free Speech**

21 Paragraphs 4A and 4B of the agreement prohibited Armstrong
22 from litigating Scientology's complaint against him on appeal
23 while allowing Scientology to litigate the matter in the appellate
24 courts to the extent it desired and was able.

25 Paragraph 7D prohibited Armstrong from speaking to others
26 about Scientology, but does not prohibit Scientology from talking
27 to others about Armstrong.

28 Paragraph 7E required Armstrong to deliver documents about
Scientology to Scientology, but does not require Scientology to
deliver to Armstrong documents it possessed concerning him.

Paragraph 7G prohibited Armstrong from assisting or
cooperating with persons adverse to, or aligned against
Scientology, but did not prohibit Scientology from assisting or
cooperating with persons who were aligned against or adverse to
Armstrong.

Paragraph 7H prohibited Armstrong from testifying about
Scientology, but did not prohibit Scientology from testifying

1 about Armstrong.

2 There are two provisions in the agreement that are mutual.
3 One is that Armstrong would dismiss his Cross-Complaint in
4 consideration for a payment of money. The other was in Paragraph
5 7I which stated that neither party would say anything about the
6 other in future litigation. As to the former, Scientology
7 obtained what it paid for, and as to the latter, Scientology has
8 consistently breached it (See Complaint at pp. 1:23-2:21, 4:10-
9 6:3). Thus, as to the provisions that Scientology seeks to
10 specifically enforce, specific performance can not be had because
11 they are one-sided, oppressive and unjust as to Armstrong.

12 The United States Supreme Court has stated that "Prior
13 restraints on speech and publication are the least tolerable
14 infringement on First Amendment rights." Nebraska Press
15 Association v. Stuart (1976) 427 U.S. 539, 559. Thus, "The loss
16 of First Amendment freedoms, for even minimal periods of time,
17 unquestionably constitutes irreparable injury." Elrod v. Burns
18 (1976) 427 U.S. 347, 373-74, 49 L.Ed.2d 547; C.B.S., Inc. v. U.S.
19 District Court (9th Cir. 1984) 729 F.2d 1174, 1177. "Under our
20 constitutional system prior restraints, if permissible at all, are
21 permissible only in the most extraordinary of circumstances." Id.,
22 729 F.2d at 1183. Therefore, prior restraint on expression comes
23 with a "heavy presumption" against constitutional validity.
24 Organization For A Better Austin v. Keefe (1971) 402 U.S. 415,
25 419.

26 "Even where individuals have entered into express agreements
27 not to disclose certain information, either by consent
28 agreement [citation]; or by an employment contract and
secrecy oath [citation], the courts have held that judicial
orders enforcing such agreements are prior restraints
implicating First Amendment rights."

29 In Re Halkin (D.C. Cir. 1979) 598 F.2d 176, 190.

30 It is clear that Paragraphs 7D, 7G, 7H and 10 are unfair to
31 Armstrong because they violate his right to freely exercise his
32 First Amendment right to freely speak about his life experience
33
34

1 regarding Scientology. ⁹/

2 **IV. THE DEMURRER AS TO THE TWELFTH CAUSE OF ACTION**
3 **MUST BE SUSTAINED ON THE GROUND OF UNCERTAINTY**

4 Civil Code section 3390 (5) prohibits specific
5 performance of "an agreement, the terms of which are not
6 sufficiently certain to make the precise act which is to be done
7 clearly ascertainable." When one seeks to obtain specific
8 performance, "a greater degree or amount of certainty is required
9 in the terms of an agreement which is to be specifically executed
10 in equity than is necessary in a contract which is the basis for at
11 action at law for damages." (Long Beach Drug Co. v. United Drug
12 Co. (1939) 13 Cal.2d 158, 88 P.2d 698, 701). Thus, even though a
13 contract might be valid, it is not necessarily specifically
14 enforceable, or the proper subject of a prohibitory injunction due
15 to its intrinsic nature, or due to lack of definiteness. (Ibid;
16 Lind v. Baker (1941) 48 Cal.2d 234, 119 P.2d 806, 812; Hunter v.
17 Superior Court (1939) 36 Cal.App.2d 100, 97 P.2d 492, 498)

18 The contract provisions which Scientology would specifically
19 enforce are fraught with uncertainty. Paragraph 7D prohibits
20 Armstrong from discussing

21 with others . . . their experiences with the Church of
22 Scientology, or concerning their personal or indirectly
23 acquired information concerning L. Ron Hubbard or [the
24 Scientology Organization" and requires him to "maintain

25 ⁹ The agreement is also unfair because it would prevent
26 Armstrong from engaging in gainful employment. Scientology
27 contends that enforcement of the agreement should include
28 preventing Armstrong from working as a paralegal for Ford Greene.
(Cmplt. at 8:25-9:15) Such is an unreasonable restraint of trade.

Business and Professions Code section 16600 provides that,
subject to exceptions contained in its chapter, "every contract
by which anyone is restrained from engaging in a lawful
profession, trade, or business of any kind to that extent is
void." The Restatement 2d, Contracts § 186 states: "(1) A promise
is unenforceable on grounds of public policy if it is unreasonably
in restraint of trade. (2) A promise is in restraint of trade if
its performance would limit competition in any business or
restrict the promisor in the exercise of a gainful occupation."

Although covenants not to compete may be enforceable if for a
limited time period, such a covenant in perpetuity is not
enforceable. Thus, the lifetime prohibition of Armstrong working
as a paralegal is void.

1 strict confidentiality and silence with respect to his
2 experiences with L. Ron Hubbard or [the Scientology
3 Organization]" including "the contents or substance of his
complaint . . . or any documents referred to in Appendix "A"
to this Agreement.

4 What are defendant's "experiences" Scientology? What is
5 "information" concerning Hubbard or Scientology? The terms are
too subjective to be capable of definition, much less enforcement.

6 Provision 7G requires Armstrong to "not voluntarily assist or
7 cooperate with any person adverse to Scientology" and "not
8 cooperate in any manner with any organizations aligned against
9 Scientology." What is "assistance" or "cooperation?" When is
10 someone "adverse" to Scientology or "aligned against Scientology"?
11 Would Armstrong violate the agreement by discussing Scientology
12 with one seeking to prevent her former spouse from exposing their
13 minor child to Scientology? In the absence of a list of
14 prohibited persons from Scientology, Armstrong would be compelled
to survey each person he meets whether such person was "aligned
against Scientology" and if so, how could he conduct such a
survey?

15 The operative terms identified above are so subjective that
16 they are insusceptible of definite interpretation. Given the fact
17 that one man's meat can be another man's poison, there is no
18 reasonable guide which can define the precise meaning of what
19 Armstrong is required to do or not to do when there is no
20 definition as to what is "adverse" or "aligned against"
21 Scientology. Thus, there are no "contractual terms which are
22 sufficiently definite to enable the court to know what it is to
23 enforce." (Tamarind Lithography Workshop v. Sanders (1983) 143
Cal.App.3d 571, 575, 193 Cal.Rptr. 409; Henderson v. Fisher
(1965) 236 Cal.App.2d 468, 477, 46 Cal.Rptr. 173)

24 CONCLUSION

25 Based upon the foregoing, it is respectfully submitted that
26 the defendant's demurrer to the complaint and to the twelfth cause
of action should be sustained.

27 DATED: June 16, 1992

28 By: 

FORD GREENE and Paul Morantz
Attorneys for Defendant